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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/435,789	11/08/1999	GORDON JAMES SMITH	RO999-123(IB)	5685

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IBM Corporation
Intellectual Property Law
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Rochester, MN 55901-7829

EXAMINER

ZIA, SYED

ART UNIT	PAPER NUMBER
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2131

DATE MAILED: 03/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/435,789

Applicant(s)

SMITH, GORDON JAMES

Examiner

Syed Zia

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 January 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because

(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);

(b) ☐ They raise the issue of new matter (see NOTE below);

(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: 7-9, 17-19 and 25.

Claim(s) rejected: 1-6, 11-16 and 24.

Claim(s) withdrawn from consideration: 10-20 and 23.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Attachment.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

13. ☐ Other: _____.

Attachment to Advisory Action

This office action is in response to arguments filed on January 24, 2005. Original application contained Claims 1-25. Applicant previously elected Claims 1-9, 11-19, and 24. Applicant previously added a new claim 25. Applicant previously amended claims 1, 6, 11, 16, 24. Therefore, presently pending claims are 1-9, 11-19, 24, and 25.

Response to Arguments

Applicant's arguments filed on January 24, 2005 have been fully considered but they are not persuasive because of the following reasons:

Regarding Claims 1, 6, 11, 16, and 24 applicants argued that “it is significant to note that the samples generated by the sampling means 2,4 using non-uniform sampling time intervals are not output as part of the scrambled bitstream or descrambled bitstream described in the cited prior art [Lee et al. U.S. Patent 5,245,661]”, and “*neither the scrambler input bitstream b_k nor scrambled bitstream $b_k + S_k$ is disclosed as being sampled using non-uniform sampling time intervals*, and also there is no motivation in the prior art for modifying the distributed sample scrambling.

This is not found persuasive. Cited prior art teaches and describes a system and method for the scrambling system that has a scrambler and a descrambler. The scrambler includes a shift register generator (SRG) for generating scrambler SRG sequence, an xor gate for generating a scrambled bitstream by *adding the binary sequence to a scrambler input bitstream*, and sampler for *sampling the scrambler SRG sequence at non-uniform intervals*, and the descrambler

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includes a second SRG (5) for generating descrambler SRG sequence, second sampling unit for sampling the descrambler SRG sequence at the same sampling times. A comparator compares these samples to those of scrambler SRG sequence in order to determine whether the samples of both are identical. A correction circuit outputs correction signals corresponding to the comparison results to the second SRG. An xor gate generates a descrambled bitstream by adding the descrambler SRG sequence to the scrambled bitstream of the scrambler.

Thus the system of distributed sample scrambling of prior art includes scrambler to generate using non-uniform intervals to scramble bitstream by adding scramble signal to input signal, and descrambler which generates descrambling sequence,

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, to implement the claimed invention because one of ordinary skill in the art understands that once the concept of uneven or non-uniform sampling rate is utilized, the nature of the input signals is irrelevant since all these signals are represented in digital form. The motivation would have been to provide a more versatile distributed sample scrambling method/system .

The examiner is not trying to teach the invention but is merely trying to interpret the claim language in its broadest and reasonable meaning. The examiner will not interpret to

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read narrowly the claim language to read exactly from the specification, but will interpret the claim language in the broadest reasonable interpretation in view of the specification. Therefore, the examiner asserts that cited prior art does teach or suggest the subject matter broadly recited in independent Claims 1, 6, 11, 16, and 24. Dependent Claims are also rejected at least by virtue of their dependency on independent claims and by other reason set forth in the previous office action (Paper No. 9). Accordingly, rejections for claims 1-9, 11-19, 24, and 25 are respectfully maintained.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Syed Zia whose telephone number is 571-272-3798. The examiner can normally be reached on 9:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ayaz Sheikh can be reached on 571-272-3795. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SZ
March 23, 2005


AYAZ SHEIKH
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100